

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al.,

Defendants.

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) CIVIL ACTION NO. 04-CV-11136GAO
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EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff

v.

DIRECT MARKETING CONCEPTS, INC., d/b/a

TODAY'S HEALTH and DIRECT FULFILLMENT,

ITV DIRECT, INC., d/b/a DIRECT FULFILLMENT,

DONALD W. BARRETT,

HEALTHY SOLUTIONS, LLC d/b/a DIRECT

BUSINESS CONCEPTS,

HEALTH SOLUTIONS, INC.,

ALEJANDRO GUERRERO, a/k/a ALEX GUERRERO,

MICHAEL HOWELL, GREG GEREMESZ,

TRIAD ML MARKETING, INC., KING MEDIA, INC.,

and ALLEN STERN,

Defendants.

Civ. No. 04-11136-GAO

**PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, plaintiff Federal Trade Commission (the "Commission"), hereby serves its initial disclosures on defendants.

I. WITNESSES

In accordance with Rule 26(a)(1)(A), the Commission hereby sets forth the names and addresses and telephone numbers, if known, of each individual likely to have discoverable information that the Commission may use to support its claims in this action. As believed by the Commission at the present time, these individuals are likely to have discoverable information regarding one or more of the following subjects, as specified for each individual or entity listed below:

- (A) The creation, development, and dissemination of the advertising that is the subject of the Commission's complaint in this action;
- (B) The practices, policies, and/or procedures of Direct Marketing Concepts, Inc. and/or ITV Direct, Inc. regarding receiving product orders from consumers, placement of consumers on autoshipment programs, billing consumers, and/or

consumer complaints relating to these topics;

- (C) Information relating to revenues from sales of products marketed, sold, or offered for sale by defendants, including Coral Calcium Daily, Supreme Greens, E-8 Daily, and any other products sold through autoshipment programs and/or upsells.
- (D) Business practices of Direct Marketing Concepts, Inc. and/or ITV Direct, Inc., including financial management of these entities;
- (E) Information relating to chargebacks from consumers for products marketed and/or sold by Direct Marketing Concepts, Inc. and/or ITV Direct, Inc.;
- (F) Falsity and/or substantiation for the advertising claims challenged in the Complaint in this action.

A. Donald W. Barrett, Jr. (defendant);

- 1. 9 Tall Tree Drive, Beverly, MA 01915; (978) 299-2548
- 2. Subjects: A, B, C, D, E, F

B. Alejandro Guerrero, a/k/a Alex Guerrero (defendant);

- 1. 1396 O'Malley Way, Upland, CA 91786; (909) 946-5344
- 2. Subjects: A, C, F

C. Michael Howell (defendant);

- 1. 4822 Terrace Ct., Fontana, CA 92336; (909) 646-9422
- 2. Subjects: A, C, F

D. Greg Geremesz (defendant);

- 1. 325 Emerson St., Upland, CA 91784; (909) 931-4083
- 2. Subjects: A, C, F

E. Allen Stern (defendant);

- 1. 1190 Grandview Terrace, Radnor, PA 19087; (610) 527-2029
- 2. Subjects: A, C, D, E, F

F. Robert Maihos

- 1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201

2. Subjects: A, B, C, D, E, F
- G. Eileen Barrett
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A, B, C, D, E, F
- H. Michael Barrett
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A
- I. Brian Middendorf
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: B
- J. Kim York
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A, B, C, D, E, F
- K. Catherine Ratcliffe
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: B, E
- L. Shauna Favalora
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: B, C, D, E
- M. Wayne Callahan
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: B, C, D

- N. Luke Goljan
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A
- O. Christopher Wood
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A
- P. Michael Wood
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A, B
- Q. Karen Cushman
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: B
- R. Linda Beliveau
1. c/o Direct Marketing Concepts, Inc., 100 Cummings Center, Suite 506 E, Beverly, MA 01915; (978) 299-2201
 2. Subjects: A
- S. Internal bookkeepers and outside accountants listed in defendants' confidential financial forms.
1. Subjects: B, C, D, E
- T. Scott Sarver
1. 16 Meetinghouse Sq., Danvers, MA 01923; (978) 750-8424
 2. Subjects: A, B, C, D, E, F
- U. William Tarmey
1. 16 Willow St., Beverly, MA 01915 ; (617) 918-3679
 2. Subjects: B, C, D

- V. Richard Cushman
1. 20 Pemberly Dr., Saugus, MA 01906; (781) 233-0794
 2. Subjects: B, C, D
- W. Steve Paris
1. Subjects: B, C
- X. Steven Ritchey
1. Subjects: A
- Y. Gerald Solem
1. Subjects: C
- Z. Scott Stanwood
1. c/o Ideal Health, Inc.
100 Market St., Portsmouth, NH 03801
(603) 334-3600
 2. Subjects: A, B, C, D
- AA. Dianne Biddy
1. c/o Ideal Health, Inc.
100 Market St., Portsmouth, NH 03801
(603) 334-3600
 2. Subjects: A
- BB. Kara Brown
1. c/o Ideal Health, Inc.
100 Market St., Portsmouth, NH 03801
(603) 334-3600
 2. Subjects: A
- CC. Kevin Trudeau
1. 601 Del Oro Drive, Ojai, CA 93023; (805) 640-0328
 2. Subjects: A, C
- DD. As of yet unidentified employees of Direct Marketing Concepts, Inc.
- EE. As of yet unidentified employees of ITV Direct, Inc.

- FF. As of yet unidentified employees of Triad ML Marketing, Inc.
- GG. As of yet unidentified employees of King Media, Inc.
- HH. As of yet unidentified employees of Ideal Health, Inc.
- II. As of yet unidentified employees of UTX, L.L.C.
- JJ. As of yet unidentified individuals involved in writing, filming, and/or producing advertisements for Supreme Greens with MSM or Coral Calcium Daily;
- KK. Daniel Pappas, and as of yet unidentified employees, of Chase Merchant Services, LLC/First Data Merchant Services
1. c/o Chase Merchant Services, LLC
265 Broad Hollow Rd.
Melville, NY 11747
 2. Subjects: C, E
- LL. As of yet unidentified consumers who purchased Coral Calcium Daily, Supreme Greens, and/or other products marketed or sold by any defendant.
- MM. Barrie R. Cassileth, Ph.D (please note that any contacts with Dr. Cassileth must be made through counsel for the Federal Trade Commission)
1. Subjects: F
- NN. Simon Yeung (please note that any contacts with Mr. Yeung must be made through counsel for the Federal Trade Commission)
1. Subjects: F
- OO. Landon S. King, M.D. (please note that any contacts with Dr. King must be made through counsel for the Federal Trade Commission)
1. Subjects: F
- PP. As of yet unknown expert regarding defendants' claims concerning Coral Calcium Daily.
1. Subjects: F
- QQ. Christina Turner (please note that any contacts with Ms. Turner must be made through counsel for the Federal Trade Commission)
1. Subjects: B

RR. FDA employees involved in investigation of DMC.

1. Subjects: A, F

SS. FTC informants who provided information relating to DMC/ITV and or Donald W. Barrett, Jr.

1. Subjects: A, B, C, D, E, F

After the Commission receives additional information from defendants and third parties during discovery, the Commission may supplement these initial disclosures.

II. DOCUMENTS

In accordance with Rule 26(a)(1)(B), the Commission hereby lists a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the Commission and that it may use to support its claims:

- A. Advertising materials for Coral Calcium Daily, including the materials attached as exhibits to the Commission's complaint;
- B. Advertising materials for Supreme Greens with MSM, including the materials attached as exhibits to the Commission's complaint;
- C. Documents received from the United States Food and Drug Administration relating to Supreme Greens with MSM, Direct Marketing Concepts, Inc., ITV Direct, Inc., and/or employees of the foregoing.
- D. Documents received from the following third parties pursuant to subpoenas issued in connection with this action: Beverly National Bank, Saugusbank, Chase Merchant Services, LLC/First Data Merchant Services, Scott Sarver.
- E. Documents received from defendants in this matter;
- F. Documents obtained during and subsequent to the Commission's document review conducted at the premises of of Direct Marketing Concepts, Inc., and ITV Direct, Inc. on June 27 and 28, 2004;
- G. Documents relating to the Commission's allegations regarding coral calcium in the case of *FTC v. Kevin Trudeau, et al.*, No. 03-3904 (N.D. Ill. (J. Gettleman));

- H. Documents submitted in support of the Commission's motion for a temporary restraining order/preliminary injunction in this matter;
- I. Documents collected regarding the falsity or substantiation, if any, of the challenged claims.
- J. Documents relating to private litigation in which defendants are involved;
- K. Complaints filed by consumers regarding defendants' products and/or policies, practices, or procedures..

After the Commission receives additional information from defendants and third parties during discovery, the Commission may supplement these initial disclosures.

III. EQUITABLE MONETARY RELIEF

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Court to award equitable monetary relief, including disgorgement, restitution and consumer redress, as relief ancillary to a permanent injunction. In this case, the Commission seeks the imposition of a permanent injunction against all defendants, an award of equitable monetary relief against those defendants (designed both to take away their ill-gotten gains and to redress consumers for economic injuries suffered as a result of defendants' alleged unlawful acts and practices), reimbursement of costs and expenses, and such other relief as the Court may deem appropriate.

During discovery, the Commission expects to obtain information detailing defendants' sales (gross sales minus any refunds) of Coral Calcium Daily, Supreme Greens with MSM, and any other products provided to consumers through autoshipment programs and/or upsells. At this time, the Commission anticipates that this sum will form the basis of its request for equitable monetary relief. Having not yet obtained full discovery in this case, it is difficult for the Commission to specify a monetary amount at this time. However, the Commission estimates that gross sales to consumers by defendants of these products may have exceeded \$80 million.

IV. INSURANCE

The Commission has no insurance or indemnification agreement at issue in this case.

Dated: August 27, 2004

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel



DANIEL KAUFMAN
KIAL S. YOUNG (Mass. Bar No. 633515)
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Washington, DC 20580
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Fax: (202) 326-3259
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

My name is Edward Glennon and I am an attorney with Federal Trade Commission. On August 27, 2004, copies of the Plaintiff's Initial Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1) were served via facsimile and first class United States mail as follows:

Becky V. Christensen, Esq. (for Michael Howell, Greg Geremesz, Health Solutions, LLC,
Levin & O'Connor Alejandro Guerrero and Health Solutions, Inc)
384 Forest Avenue, Suite 13
Laguna Beach, CA 92651
Facsimile: (949) 497-7679

Dustin F. Hecker (for Michael Howell, Greg Geremesz, Health Solutions,
Posternak Blankstein & Lund LLP LLC, Alejandro Guerrero and Health Solutions, Inc)
The Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199-8004
Facsimile: (617) 722-4927

Corey W. Roush, Esq.
Hogan & Hartson, LLP
555 Thirteenth St., NW
Washington, D.C. 20004
Facsimile: (202) 637-5910

Barry J. Cutler, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, NW; Suite 1100
Washington, D.C. 20036
Facsimile: (202) 861-1783

Peter Brooks, Esq. (for Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald Barrett)
Seyfarth Shaw, LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210
Facsimile: (617) 946-4801

Jeffrey D. Knowles, Esq. (for Triad ML Marketing, Inc., King Media, Inc., and Allen Stern)
Venable LLP
575 7th St., NW
Washington, DC 20004
Facsimile: (202) 344-8300

I declare under penalty of perjury that the foregoing is true and correct. Executed this August 27, 2004 at Washington, D.C.


Edward Glennon